

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Rebecca R. Pallmeyer	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 9455	DATE	12/21/2004
CASE TITLE	USA ex rel. Charles Stone vs. Gregory S. Lambert		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry]   Enter Memorandum Opinion And Order. The petition for habeas relief is denied.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.		3	Document Number  14
<input type="checkbox"/>	No notices required.		number of notices	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		DEC 22 2004	
<input type="checkbox"/>	Notified counsel by telephone.		date docketed	
<input type="checkbox"/>	Docketing to mail notices.		docketing deputy initials	
<input checked="" type="checkbox"/>	Mail AO 450 form.	12/21/2004	date mailed notice	
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ETV		courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

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he claims that his due process rights were violated by the prosecutor's refusal to disclose signed statements by the alleged victim that, Petitioner claims, contradict her trial testimony. In addition, Petitioner argues that his trial counsel was ineffective for failing to file pretrial motions on his behalf, failing to object to the state's dismissal of the battery charge, failing to call a "vital" witness, and due to a "conflict of interest [that] kept [counsel] from investigating the case, and [left him] unprepared." (Section 2254 Petition, at 6.) Finally, Petitioner alleges that the jury instructions were confusing and "all in favor of the state's case," and that the judge "neglected his duty to be impartial." (*Id.* at 7.) For the reasons explained below, the petition is denied.

### **DISCUSSION**

Under the Antiterrorism and Effective Death Penalty Act, a prisoner is entitled to a writ of habeas corpus if he is being held pursuant to a state court judgment obtained in violation of the United States Constitution. 28 U.S.C. § 2254. Prior to a federal court considering a habeas petition on the merits, the petitioner must first: "(1) exhaust all remedies available in state courts . . . and (2) fairly present any federal claims in state courts first, or risk procedural default." *Bocian v. Godínez*, 101 F.3d 465, 468 (7th Cir. 1996) (citations omitted). A federal habeas petitioner cannot proceed in federal court until he has given the state courts "one full opportunity to resolve any constitutional issues by invoking one complete round of the state's established appellate process." *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). Moreover, it is not sufficient for the petitioner simply to have merely been through a full-round of state court appeals; rather, the petitioner must "present the state courts with the same claim he urges upon the federal courts." *Picard v. Connor*, 404 U.S. 270, 276 (1971) (citations omitted); *Rodriguez v. Scillia*, 193 F.3d 913, 917 (7th Cir. 1999). In other words, a petitioner is required to set forth his claims "in such a way as to fairly alert the state court to any applicable [federal] constitutional grounds for the claim." *Bocian*, 101 F.3d at 469 (citations omitted). A petitioner for habeas relief must submit "both the

operative facts and the controlling legal principles of a constitutional claim” before properly seeking habeas review in the federal courts. *Id.*

In the present case, Petitioner has failed to give the Illinois state courts one full opportunity to hear any of the three claims raised in his § 2254 petition. None of Petitioner's current claims for habeas relief were raised in his direct appeal. Petitioner did raise some or all of these issues in his post-conviction petition in state court, but he did not include them in his appeal from the trial court's denial of that petition, nor in his petition for leave to appeal to the Illinois Supreme Court. Thus, Petitioner did not give the Illinois state courts a full and fair opportunity to resolve his constitutional claims by raising these claims through one full round of the appellate process.

Because he failed to give the state courts an opportunity to resolve these issues, a federal court will not review the merits of his habeas petition unless Petitioner demonstrates cause for the default and actual prejudice as a result of the failure, or demonstrates that the failure to consider the claims will result in a fundamental miscarriage of justice. *Dellinger v. Bowen*, 301 F.3d 758, 764 (7th Cir. 2002) (citing *Rodriguez*, 193 F.3d at 917). Here, Petitioner cites no cause for his failure to properly raise the claims in the state courts, nor does the evidence suggest that a fundamental miscarriage of justice has occurred. A “fundamental miscarriage of justice” occurs when, absent the constitutional violation, “it is more likely than not that no reasonable juror would have convicted him.” *Murray v. Carrier*, 477 U.S. 478, 492 (1986) (citing *Schlup v. Delo*, 513 U.S. 298, 329 (1995)). Petitioner provides no evidence suggesting that the alleged constitutional errors were of such a magnitude. For these reasons, the petition for habeas relief is denied.

ENTER:

Dated: December 21, 2004

  
REBECCA R. PALLMEYER  
United States District Judge